

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LARON MCKINLEY BEY,

Plaintiff,

v.

Case No. 16-C-521

WILLIAM J. POLLARD

Defendant.

ORDER

Plaintiff, La Ron McKinley Bey, filed this *pro se* action under 42 U.S.C. § 1983 on April 29, 2016, and amended his complaint on May 2, 2016. On June 30, 2016, Judge Rudolph Randa screened the amended complaint and determined that, while Plaintiff's allegations implicated his constitutional rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution, he could not be a class representative given his *pro se* status and directed him to file an amended complaint. Dkt. No. 18 at 9–10. Plaintiff filed a second amended complaint on July 25, 2016. On August 3, 2016, due to the unavailability of Judge Randa, the case was transferred to this court and screened. The July 25, 2016 complaint, Dkt. No. 19, was deemed the operative complaint and the defendants were directed to file an answer. On June 8, 2017, Plaintiff filed a motion to voluntarily dismiss his complaint without prejudice, explaining that he wished to refile at a later date, Dkt. No. 64, that the court granted on June 9, 2017. Dkt. No. 66. This matter is currently before the court on Plaintiff's letter wherein he states that he wishes continue pursuing his case either by reopening this case or filing a new complaint. Dkt. No. 67.

Under Fed. R. Civ. Pro. 60(b)(1), a court may grant relief from a final order resulting from “mistake, inadvertence, surprise, or excusable neglect.” The court’s order granting Plaintiff’s motion for voluntary dismissal was not the result of any of those factors. Rather the case was dismissed at the behest of Plaintiff. Consequently, should Plaintiff wish to proceed on his claims that were dismissed, absent the running of the statute of limitations, Plaintiff is free to refile his complaint and start a new action given that the court’s dismissal was without prejudice. Unfortunately, Plaintiff will be required to pay another filing fee.

SO ORDERED this 12th day of April, 2019.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court